IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

UNITED RIGGING AND HAULING, INC. 6701 Ammendale Road Beltsville, Maryland 20705 (301) 937-8510

-and-

CHARLES E. SLOAN,

b) (6)

Plaintiffs

v.

THE POTOMAC ELECTRIC POWER
COMPANY
1900 Pennsylvania Avenue, N.W.
Washington, D.C. 20068

RICHEY, J.

\5-3194

Civil Action No.

OCT 0 7 1985

COMPLAINT FOR DECLARATORY JUDGMENT AND DAMAGES

Plaintiffs, by their attorneys, complaining of the defendant, allege:

Identity Of Parties

l. Plaintiff, United Rigging and Hauling Company
("United") is a corporation organized under the laws of the
state of Delaware, with its principal place of business in
Maryland. United is licensed to do business, and is doing and
transacting business, in the District of Columbia. United is

engaged in the rigging and hauling business and, as part of its operations, occasionally stores and recovers metal from scrap electrical transformers and other electrical equipment.

- 2. Plaintiff Charles E. Sloan ("Sloan") is a resident of the state of Maryland. Sloan is president of United and is owner of approximately 15 acres of property located in Beltsville, Maryland from which United's rigging and hauling business is principally operated ("United site").
- ("PEPCO"), is a public utility organized under the laws of the District of Columbia with its principal place of business in the District of Columbia. PEPCO is licensed to do business, and is doing and transacting business, in the state of Maryland. PEPCO is engaged in the business of generating electrical power and, as part of its business, PEPCO is engaged in the ongoing purchase, use, inventory, sale and disposal of electrical transformers and other electrical equipment including transformers and other electrical equipment containing hazardous levels of toxic substances such as polychlorinated biphenyls (PCB's).

Nature Of Action And Jurisdiction

4. This action seeks relief in the nature of a declaratory judgment and damages arising out of the numerous and repeated sales by PEPCO to United of junk electrical transformers and other junk electrical equipment falsely and

inaccurately represented by PEPCO as tested, uncontaminated by toxic substances, in compliance with applicable government regulations and otherwise safe for United's intended use for recovery of scrap metals; for attorneys' fees and costs of suit; and for such other relief as may be appropriate.

- 5. The jurisdiction of this court is based on 28 U.S.C. § 1332(a)(1). There is complete diversity of citizenship between United and Sloan, and PEPCO, and the matter in controversy exceeds the value of \$10,000.00, exclusive of interests and costs.
- 6. Venue is properly placed in this district pursuant to 28 U.S.C. § 1391(c).

Statement Of Facts

- 7. During the period from 1980 through 1983, PEPCO and United entered into a series of agreements for the sale by PEPCO of certain junk electrical transformers and other electrical equipment (referred to hereinafter generically as "transformers") to United. These agreements were negotiated and executed in the District of Columbia.
- 8. Pursuant to these sales agreements, United was to take delivery and remove junk transformers designated by PEPCO from various PEPCO facilities located in the District of Columbia. In some cases, United was to pay a straight purchase price; in other cases, involving significant labor costs for

the dismantling and removal of transformers, the purchase price was reduced by a fee for United's services resulting in a net payment by PEPCO.

- 9. In agreeing to sell the transformers, PEPCO made representations to United that the transformers were uncontaminated by PCB's or other toxic materials, that they complied with all applicable government statutes and regulations, and that they were otherwise safe for use as scrap. Each of the separate sales agreements incorporated an ongoing understanding that such representations were in effect. These representations included, inter alia, those contained in the following communications:
- a. A letter dated February 22, 1980 from F.P. Lear of PEPCO to Sloan indicating that the transformers to be removed from PEPCO's Sinclair substation to United contained, at most, negligible quantities of PCB's.
- patterson and Sloan at the Prime Rib Restaurant in the District of Columbia during which Patterson, knowing that PEPCO intended to leave oil remaining in the transformers to be sold in the group in question, made no mention that the transformers would contain contaminated oil and implied that the contents would pose no problem for United.
 - C. A letter dated January 6, 1982 from PEPCO to United stating that all transformers to be sold would be batch tested for PCB content as required by EPA regulations.

- d. Letters dated March 9, 1981, March 22, 1982, February 3, 1983 and December 22, 1983 from PEPCO to United, signed by Patterson, confirming that all "scrap" transformers would be batch tested for PCB content but apparently purporting to disclaim responsibility for compliance with EPA regulations. Patterson orally explained to Sloan that the confusing disclaimers were mere legal formalities devoid of any substantive meaning and that there was "nothing to worry about" regarding PCB content of the transformers. Patterson was well aware at that time that United had no testing capability.
- e. A purchase order dated November 3, 1982 with Patterson's authorized signature representing that PEPCO would "test and remove all oil" from the electrical equipment to be picked up by United. The order promised that the equipment would be flushed "as necessary to insure compliance with EPA regulations."
- by PEPCO to United during the period from 1980 through 1983 contained substantial proportions of PCB's, a highly toxic substance, in violation of laws and regulations of the United States and the State of Maryland and were unsafe for use as scrap.
- 11. Significant quanities of PCB's from these transformers spilled or leaked onto the United site in the

course of the normal storage, handling and dismantling of the transformers by United.

- 12. The leaking and spilling of PCB-contaminated oil from the transformers caused massive pollution on, and damage to, the United site.
- 13. The United States and the state of Maryland launched a major investigation of the matter subjecting Sloan and United to substantial adverse media attention, liability exposure for cleanup costs, public scorn and other adverse consequences.

Count I (Breach of Contract/Express Warranty)

- 14. Plaintiffs repeat and reallege the allegations set forth in paragraphs 1 through 13, as if fully set forth herein.
- inter alia, those described in paragraph 9 above, constituted an agreement and express warranty that the transformers were uncontaminated by PCB's, met all requirements under applicable government statutes and regulations, and were otherwise safe for scrap.
- 16. The transformers were expressly described and -warranted as "junk" and/or "scrap" transformers.
 - 17. At all relevant times PEPCO was with superior knowledge regarding the contents of the transformers and the

responsibilities of the parties under applicable statutes and regulations. In fact, PEPCO had a protocol for testing and has claimed to have a state-of-the-art program for testing and handling PCBs, having established "internal procedures even before regulations were issued."

- 18. In purchasing the transformers, United relied on the representations by PEPCO.
- 19. PEPCO breached its contract with United and its express warranty for the sale of transformers which were uncontaminated by PCB's, in compliance with applicable government statutes and regulations, and otherwise safe for scrap.
- their person and in their business and property as a direct result of the breach of contract/express warranty, known by defendant at the time of contract to be probable consequences of the breach, including dimunition in the value of the United site, harm to business reputation and profits, loss of inventory, increased cost of plant, loss of plant use, harm to personal reputation, mental anguish from government investigation and adverse media attention, liability exposure for clean-up costs, contingent liability and increased insurance costs for harm to employees and bystanders, administrative costs and legal fees incurred pursuant to the government investigations, and other damages proximately caused



by defendant's breach. The amount of the damages is not presently determinable with precision. On information and belief, however, those damages are no less than \$25 million.

Count II (Breach of Implied Warranty of Fitness For Particular Purpose)

- 21. Plaintiffs repeat and reallege the allegations set forth in paragraphs 1 through 19 as if fully set forth herein.
- 22. PEPCO was aware of precisely the purpose for which United was purchasing the transformers, to wit, for scrap.
- 23. United properly relied on PEPCO's superior knowledge and judgment regarding the contents of the transformers.
- 24. PEPCO implicitly warranted that the transformers were fit for the intended purpose, <u>i.e.</u>, at a minimum, that the transformers would not be injurious to persons or property in the course of the intended use for scrap.
- 25. The PCB content of the transformers was such as to render them unfit for the purpose of scrap and, therefore, PEPCO breached its implied warranty.
- their person and in their business and property as a direct result of the breach of implied warranty, known by defendant at the time of contract to be probable consequences of such breach, including dimunition in the value of the United site,

harm to business reputation and profits, loss of inventory, increased cost of plant, loss of plant use, harm to personal reputation, mental anguish from government investigation and adverse media attention, liability exposure for clean up costs, contingent liability and increased insurance costs for harm to employees and bystanders, administrative costs and legal fees incurred pursuant to the government investigations and other damages proximately caused by defendant's breach. The amount of the damages is not presently determinable with precision. On information and belief, however, those damages are no less than \$25 million.

Count III (Negligent Misrepresentation/Failure to Warn)

- 27. Plaintiffs repeat and reallege the allegations set forth in paragraphs 1 through 26 as if fully set forth herein.
- 28. As seller of the transformers, PEPCO had a duty to exercise care in making representations about any hazardous contents of the transformers such as the representations described in paragraph 9 above, as well as a duty to warn United as to the hazardous contents of the transformers.
- 29. PEPCO did not exercise the requisite care in making the representations as to the PCB content of the transformers sold to United.

- in the scrapping and disposing of the transformers containing substantial quantities of PCB's and of the need to carefully test and label transformers for PCB content and properly dispose of hazardous waste oil. This awareness is evidenced, inter alia, in the fact that PEPCO frequently removed hazardous waste oil from transformers it was disposing of on its own to its own hazardous waste facility during the period from 1980 through 1983.
- 31. PEPCO negligently, recklessly, and/or with conscious indifference and callous disregard for its responsibilities and for the safety of United and its employees, misrepresented the PCB contents of the transformers.
- their person and in their business and property as a direct result of defendant's negligence including dimunition in the value of the United site, harm to business reputation and profits, loss of inventory, increased cost of plant, loss of plant use, harm to personal reputation, mental anguish from government investigation and adverse media attention, liability exposure for clean up costs, contingent liability and increased insurance costs for harm to employees and bystanders, administrative costs and legal fees incurred pursuant to the government investigations and other damages proximately caused by defendant's breach. The amount of the damages is not



presently determinable with precision. On information and belief, however, those damages are no less than \$25 million.

Count IV (Fraudulent Misrepresentation)

- 33. Plaintiffs repeat and reallege the allegations set forth in paragraphs 1 through 30 as if fully set forth herein.
- misrepresentations concerning the hazardous contents of the transformers, with knowledge that its representations were false and/or with the pretense of knowledge as to the hazardous contents of the transformers and/or recklessly and heedlessly without regard for the possible consequences and with a reckless disregard of its lack of information as to the truth of the representations.
- United, PEPCO concealed information as to the PCB contents of the transformers with awareness that high concentrations of PCB's would render the transformers dangerous to persons or property in the course of United's intended use for scrap.
- 36. Plaintiffs have suffered injury and damages to their person and in their business and property as a direct result of defendant's fraudulent misrepresentations including dimunition in the value of the United site, harm to business reputation and profits, loss of inventory, increased cost of

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plant, loss of plant use, harm to personal reputation, mental anguish from government investigation and adverse media attention, liability exposure for clean up costs, contingent liability and increased insurance costs for harm to employees and bystanders, administrative costs and legal fees incurred pursuant to the government investigations and other damages proximately caused by defendant's breach. The amount of the damages is not presently determinable with precision. On information and belief, however, those damages are no less than \$25 million.

Count V (Strict Liability In Tort)

- 37. Plaintiffs repeat and reallege the allegations set forth in paragraphs 1 through 36 as if fully set forth herein.
- 38. By selling transformers containing hazardous levels of PCB's to United, PEPCO placed on the market equipment in a defective condition, unsafe for the intended use as scrap and unreasonably dangerous.
- 39. The manner in which United used the transformers was reasonably foreseeable by PEPCO.
- 40. PEPCO issued no warnings to United as to the hazardous contents of the transformers.
- 41. PEPCO was aware that the transformers would be used by United as scrap without inspection for defects or hazardous contents.

PEPCO is strictly liable in tort for injury and 42. damages which plaintiffs have suffered to their person and in their business and property as a direct result of the defective and hazardous condition of the transformers. These injuries and damages include dimunition in the value of the United site, harm to business reputation and profits, loss of inventory, increased cost of plant, loss of plant use, harm to personal reputation, mental anguish from government investigation and adverse media attention, liability exposure for cleanup costs, contingent liability and increased insurance costs for harm to employees and bystanders, administrative costs and legal fees incurred pursuant to the government investigations, and other damages proximately caused by the defective and hazardous condition of the transformers. The amount of the damages is not presently determinable with precision. On information and belief, however, those damages are no less than \$25 million.

Count VI (Intentional Tort)

- 43. Plaintiffs repeat and reallege the allegations set forth in paragraphs 1 through 41 as if fully set forth herein.
- 44. By selling the transformers to United, PEPCO deliberately placed in the stream of commerce equipment known to be harmful and/or defective.

- 45. PEPCO's sale of the transformers was a willful and wanton act with a clear lack of regard for the safety and wellbeing of United and others.
- their person and in their business and property as a result of defendant's intentional acts including dimunition in the value of the United site, harm to business reputation and profits, loss of inventory, increased cost of plant, loss of plant use, harm to personal reputation, mental anguish from government investigation and adverse media attention, liability exposure for clean up costs, contingent liability and increased insurance costs for harm to employees and bystanders, administrative costs and legal fees incurred pursuant to the government investigations and other damages proximately caused by defendant's breach. The amount of the damages is not presently determinable with precision. On information and belief, however, those damages are no less than \$25 million.

Count VII (Negligence Per Se)

- 47. Plaintiffs repeat and reallege the allegations set forth in paragraphs 1 through 46 as if fully set forth herein.
- 48. By selling the contaminated transformers to United, PEPCO violated the public policy of the United States, the state of Maryland and the District of Columbia regarding

the protection of the environment generally, and persons and property in particular, from exposure to hazardous substances.

- United, PEPCO violated the laws and regulations of the United States concerning the protection of the environment, persons and property from exposure to toxic substances. PEPCO violated, inter alia, the following statutes and regulations:

 15 U.S.C. §§2605 and 2607 and 40 C.F.R. 761.
- 50. United is part of the class of those intended to be protected by the statutes and regulations described in paragraph 49.
- Plaintiffs have suffered injury and damages to 51. their person and in their business and property as a result of defendant's negligent violations of laws and public policy including dimunition in the value of the United site, harm to business reputation and profits, loss of inventory, increased cost of plant, loss of plant use, harm to personal reputation, mental anguish from government investigation and adverse media attention, liability exposure for clean up costs, contingent liability and increased insurance costs for harm to employees and bystanders administrative costs and legal fees incurred pursuant to the government investigations and other damages proximately caused by defendant's breach. The amount of the damages is not presently determinable with precision. On information and belief, however, those damages are no less than \$25 million.



WHEREFORE, plaintiffs request judgment on their complaint as follows:

- 1. That this Court adjudge, determine, and declare that defendant is obligated to pay in full for all costs of cleanup of the United site and surrounding areas ordered by the state of Maryland and/or the United States, including orders issued by consent, and for the defense, settlement and/or judgment of all present and future environmental and tort cases filed against plaintiffs alleging exposure to toxic chemicals in any way connected with any of the scrap transformers sold by PEPCO to United.
- 2. As to Counts I through VII, for monetary damages in the amount of \$25 million to plaintiff United Rigging and Hauling, Inc., and in the amount of \$25 million to plaintiff Charles E. Sloan for the damages asserted in each count.
- damages in the amount of \$20 million to plaintiff United Rigging and Hauling, Inc., and in the amount of \$20 million to plaintiff Charles E. Sloan for misrepresentations made by PEPCO with knowledge of the statements' falsity and/or in reckless disregard of the truth thereof, for willfully and wantonly placing in the stream of commerce equipment known to be harmful and with a lack of regard for the safety and wellbeing of plaintiffs and others, and for the knowing and/or reckless violation of the public policy and laws of the United States.

Said misrepresentations have resulted in injury and damages in plaintiffs' business and property as described in the above counts.

- For plaintiffs' costs of suit.
- 5. For plaintiffs' reasonable attorneys' fees.
- 6. For interest according to law.
- 7. For such other and further relief as this Court deems just and proper.

JURY DEMAND

Plaintiffs hereby demand a trial by jury as to all counts and claims triable of right to a jury.

Respectfully submitted,

William J. Rodgers Arthur B. Pearlstein

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Attorneys for Plaintiffs